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Attorneys for Defendants PALO ALTO
NETWORKS, INC. AND PATRICK
BROGAN

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 FORTINET, INC.,)	CASE NO.: 09-CV-00036-RMW (PVT)
)	
13 Plaintiff,)	
)	REVISED SECOND SUBSEQUENT
14 v.)	JOINT CASE MANAGEMENT
)	STATEMENT
15 PALO ALTO NETWORKS, INC., and)	
16 PATRICK R. BROGAN,)	
)	
17 Defendants.)	
)	
18)	

19 Pursuant to Civil Local Rule 16-10(d) and pursuant to the Clerk's Notice of Setting Case
20 Management Conference dated November 22, 2010 (Dkt. 242), Plaintiff Fortinet, Inc.
21 ("Fortinet") and Defendants Palo Alto Networks, Inc. ("PAN") Patrick R. Brogan ("Brogan")
22 (PAN and Brogan are collectively "Defendants") submit this Revised Second Subsequent Joint
23 Case Management Statement.

24 On December 3, the parties filed a second subsequent joint case management statement
25 that agreed on much but asked the Court to decide one dispute: when Fortinet would provide
26 Final Infringement Contentions. The parties continued to meet and confer on that issue and
27 submit this revised second subsequent case management statement that resolves that remaining
28

1 issue and obviates the need for a case management conference at this time unless the Court
2 wishes one.

3 **I. PROPOSALS FOR REMAINDER OF CASE**

4 **A. ADR, Motions, and Hearings**

5 Fortinet does not anticipate filing any additional summary judgment motions prior to the
6 scheduled deadline. Fortinet also has agreed to withdraw its motion to compel pursuant to the
7 agreement set forth herein which resolves all remaining issues relating to technical discovery.
8 Fortinet reserves the right to bring a motion to compel covering any aspect of non-technical
9 discovery, if necessary, at an appropriate time. The parties have scheduled a private mediation
10 with Judge Infante for January 11, 2011.

11 PAN believes that should that mediation prove unsuccessful, a further motion directed to
12 non-infringement of the '125/'311 patents will dispose of the remainder of the patent issues in
13 the case and that, as the parties agreed in their prior Joint Case Management Statement,
14 resolution of the patent issues may resolve the matter. Dkt. 54 at 3. While Fortinet does not
15 agree that a further motion will resolve the remaining patent issues, it also does not oppose PAN
16 bringing such a further motion after it has had an opportunity to receive specific further technical
17 discovery and to take the deposition of Nir Zuk. As explained below, PAN has agreed to provide
18 Fortinet that discovery.

19 Finally, Fortinet has filed a new case alleging three additional patents against PAN. That
20 case now is assigned to Judge Seeborg, and Fortinet's suggestion that the Court should consider
21 whether Fortinet's new case ought to be related to this case remains pending. PAN likewise
22 believes that the cases should be related.

23 **B. Discovery**

24 Fortinet has identified one category of documents that it wishes PAN to produce before
25 technical discovery is brought to a close: documents marked confidential by Cavium in PAN's
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27
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1 possession.¹ After it receives those documents, Fortinet has requested a further deposition of Nir
2 Zuk on the structure, function and operation of the accused products. At that point, Fortinet has
3 agreed that it can and will provide Final Infringement Contentions. Fortinet also has requested
4 the production of two other categories of documents: organizational charts and documents,
5 including webcasts, on PAN's website related to the accused products.

6 PAN agrees to produce those three categories of documents. Cavium previously denied
7 but recently gave PAN permission to produce its confidential information so long as PAN marks
8 the documents attorneys-eyes only. Having now received permission, PAN will produce the
9 Cavium-confidential information by Friday, December 17, 2010. PAN also does not object to
10 the production of organizational charts and will produce documents and webcasts currently and
11 formerly publically available on its website (to the extent such web content is in PAN's
12 possession or readily available to PAN). PAN will complete these productions no later than
13 January 7, 2011. Given the scheduled mediation on January 11, PAN also agrees to offer Nir
14 Zuk for deposition on or before January 21. In return, Fortinet has agreed to provide Final
15 Infringement Contentions by February 4, 2011. Fortinet will not seek leave to amend its Final
16 Infringement Contentions unless new information surfaces that was not previously known to
17 Fortinet due to a discovery failure by PAN.

18 Moreover, the parties have agreed that given the parties' January 11 mediation and the
19 fact that PAN will file a renewed motion on non-infringement, the existing limits on discovery,
20 established in the CMO, remain in place. The alternative is that both parties will have to engage
21 now in full-blown and expensive damages discovery, which PAN believes may not be required.
22 If such discovery is eventually required, there is no harm to conducting damages discovery then.

23 The parties therefore agree to the following schedule:
24

25 ¹ PAN provided Fortinet with identification of third parties whose information has been
26 withheld from production. Fortinet does not believe any such information, other than that of
27 Cavium, is required in this case. Fortinet, however, reserves the right to request production of
28 those third party documents should it become necessary in view of the remaining technical
discovery.

Event	Date
Production of Final Technical Documents	January 7, 2011
Deadline for Deposition of Nir Zuk	January 21, 2011
Final Infringement Contentions	February 4, 2011
Final Invalidity Contentions	February 25, 2011
Motion for Summary Judgment re: Non-Infringement of the '125/'311 Patents	February 25, 2011
Opposition to Motion for Summary Judgment re: Non-Infringement of the '125/'311 Patents	March 25, 2011
Reply in Support of Motion for Summary Judgment re: Non-Infringement of the '125/'311 Patents	April 8, 2011
Proposed Hearing Date on Motion for Summary Judgment	April 22, 2011
Case Management Conference	20-Days After Order on Motion for Summary Judgment

Dated: December 16, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Stefani E. Shanberg
Stefani E. Shanberg

Attorneys for Plaintiff FORTINET, INC.

Dated: December 16, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Ragesh K. Tangri
Ragesh K. Tangri

Attorneys for Defendants
PALO ALTO NETWORKS, INC. AND
PATRICK BROGAN

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CASE MANAGEMENT ORDER

The Revised Second Subsequent Case Management Statement and Proposed Order, including the Proposed Schedule as set forth above, is hereby adopted by the Court as the Case Management Order for the case, and the parties are ordered to comply with the Order.

Dated: _____
Hon. Ronald M. Whyte
United States District Court Judge

1 **ATTESTATION CLAUSE**

2 I, Stefani E. Shanberg, am the ECF User whose identification and password are being
3 used to file this Second Subsequent Joint Case Management Conference Statement. In
4 compliance with General Order 45.X.B., I hereby attest that Ragesh K. Tangri of Durie Tangri
5 LLP has concurred in this filing.
6

7 Dated: December 16, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

8
9 By: /s/ Stefani E. Shanberg
10 Stefani E. Shanberg

11 Attorneys for Plaintiff
12 FORTINET, INC.
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